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Chapter VIII. Contract Disputes and Termination

It is the Commission's fiduciary and administrative responsibility to protect the integrity of and ensure a viable Cal-SOAP that is meeting the needs of the population of the program it is to serve and the mandates of the law that established it.

Cal-SOAP projects are expected to comply with the program's requirements and the provisions of the Cal-SOAP project agreement at all times which includes all applicable laws, regulations, policies and procedures governing the program. It also includes compliance with the policies and requirements contained in this manual.

This chapter addresses the procedures that shall be followed and the policies and requirements applicable to contract disputes and the termination of the Cal-SOAP agreement.

1.0. Contract Disputes

If there is a dispute or grievance between the Consortium and the Commission arising out of or relating to the Cal-SOAP agreement, the following policies and procedures shall be followed.

1.1. State Contract Manager

The State Contract Manager is the manager responsible for the administration of the Cal-SOAP agreements. For the purpose of this section, the Contract Manager is the Commission's Chief of Outreach and Training or designee.

1.2. Contract Officer

The Contract Officer is the staff responsible for overseeing the Commission's contracts and contracting process. The Contract Officer is located within the Contract Office of the Management Services Division of the Commission.

1.3. First Level of Dispute Process

The Consortium shall first discuss the dispute or grievance informally with the State Contract Manager within the Commission's Outreach and Training Division. If the problem cannot be resolved at this stage, the Consortium shall direct the grievance together with any evidence, in writing, to the Commission's General Contract Office within the Management Services Division. The Contract Officer shall make a determination on the dispute or grievance within ten (10) working days after receipt of the written communication from the Consortium. The Contract Office shall respond, in writing, to the Consortium, indicating the decision and reasons thereof. Should the Consortium disagree with the Contract Office decision, the Consortium may appeal to the second level.

1.4. Second Level of Dispute Process

The Consortium shall prepare a letter indicating why the Contract Office decision is unacceptable. The letter shall include the Consortium's original statement of the dispute with supporting documents along with a copy of the Contract Office response. This letter shall be sent to the Executive Director of the Commission within ten (10) working days from receipt of

the Contract Office decision. The Executive Director or designee shall meet with the Consortium to review the issues raised. A written decision, signed by the Executive Director or designee, shall be returned to the Consortium within twenty (20) working days of receipt of the Consortium's letter.

1.5. Arbitration

At the Consortium's option, further arbitration of a claim may be sought in a manner mutually agreed to by all parties.

Each party shall provide written notice to each other of an intention to exercise this provision. Both parties must agree to submit to arbitration. The dispute or grievance shall be resolved by a panel of three (3) experts in the particular field of dispute. Each party shall have the right to select one (1) panelist. If a party does not exercise that right within ten (10) working days after written agreement to submit to arbitration, the other party may select one (1) additional panelist. The selected panel will then select a third member.

1.6. Hearing Date

The panel shall set a hearing date, time and place convenient to the parties within thirty (30) working days of the panel selection. Each party shall submit a written statement to the panel and the opposing party issues and arguments to be presented within five (5) working days of the hearing date. The hearing shall be informal with an opportunity for both parties to present their arguments. A court reporter may be present at the expense of the requesting party. The panel shall provide the parties with a written decision within thirty (30) days of the hearing. This decision shall be binding on the parties.

1.7. Costs of Arbitration

The costs of the arbitration panel shall be borne equally by the parties. At the option of the parties, these costs may be deducted from any balance of the agreement funds. Both parties must agree, in writing, to use agreement funds to reimburse the arbitration panel.

2.0. Termination

If the Commission determines that it is in the best interest of the State or the Cal-SOAP to terminate a Consortium's agreement or if the Consortium wishes to cease operations or terminate the agreement, the following policies and procedures shall be followed.

2.1. Terminating the Agreement

The Commission or the Consortium may, at their option, terminate the Cal-SOAP agreement at any time upon giving thirty (30) days advance notice, in writing, to the other parties in the manner specified in the contract notice section 2.3 of this chapter. In such event, the Consortium agrees to use all reasonable efforts to mitigate expenses and obligations hereunder. In such event, the Commission shall pay the Consortium for all satisfactory services rendered and expenses incurred prior to the notice of termination, which could not, by reasonable efforts of the Consortium, have been avoided, but not in excess of the agreement

maximum payable. In such event, the Consortium agrees to relinquish possession of equipment or any other assets as provided by the terms of the Cal-SOAP agreement.

2.2. Contract Termination due to Gratuities being Offered or Given by the Consortium to State Employees

The Commission may, by written notice to the Consortium, terminate the rights of the Consortium to proceed under the Cal-SOAP agreement if it is found that gratuities were offered or given by the Consortium to State employees. Notice shall be given and a hearing held by the Commission, or by the Executive Director of the Student Aid Commission or his duly authorized representative. Offer of gratuities by the Consortium to any officer or employee of the State with a view toward securing a Cal-SOAP agreement or securing favorable treatment with respect to awarding or amending or making a determination with respect to performance of the agreement is against state policy and considered an incompatible activity. In the event the agreement is terminated as provided herein, the Commission shall be entitled to pursue the same remedies against the Consortium as it could pursue in the event of the breach of the agreement by the Consortium, in addition to any other damages to which it may be entitled by law. The rights and remedies of other parties provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

2.3. Termination for Cause

The Commission may terminate the agreement and be relieved of any payments should the Consortium fail to perform the requirements of the agreement at the time and in the manner provided. In the event of such termination, the Commission may proceed with the work in any manner deemed proper by the Commission. All costs to the Commission shall be deducted from any sum due the Consortium under the agreement and the balance, if any, shall be paid to the Consortium upon demand.

2.4. Contract Notice

Notice of either party may be given by properly addressed certified mail, postage fully prepaid, to the address beneath the name of each respective party. Such notice shall be effective when delivered unless a legal holiday for the Commission offices commences during said 24-hour period, in which case the effective time of the notice shall be postponed 24 hours for each intervening day. For notice purposes, the Commission's name and address is:

California Student Aid Commission
10834 International Drive
Rancho Cordova, CA 95741-9026

2.4. Required Actions by the Consortium upon Notice of a Termination Action

Upon receipt of the action the Consortium shall do the following:

- Stop work under the agreement on the date and to the extent specified in the notice of termination,
- Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the agreement as is not terminated;

- Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination;
- Assign to the Commission, in the manner and to the extent directed by the State Contract Manager, all of the right, title and interest of the Consortium under the orders or subcontracts so terminated, in which case the Commission shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts:
- With the approval or ratification of the State Contract Manager, to the extent requested, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination or orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of the Cal-SOAP agreement;
- Transfer possession and title to the Commission (to the extent that title has not already been transferred) and deliver in the manner, at the times and to the extent directed by the State Contract Manager, (1) all files, data manuals or other documentation, in any form, that relate solely to the work terminated by the notice of termination; and (2) any forms and other similar tangible assets acquired in respect to performance of the work terminated by the notice of termination.
- Complete the performance of such part of the work as shall not have been terminated by the notice of termination; and,
- Take such action as may be necessary, or as the State Contract Manager may direct, for the protection and preservation of the property related to the Cal-SOAP agreement which is in the possession of the Consortium and in which the Commission has or may acquire an interest.

2.5. Termination Expense Claim

After receipt of a notice of termination, the Consortium shall submit to the State Contract Manager its Termination Claim as prescribed by the State Contract Manager. Such claim shall be submitted promptly but in no event later than within 90 days from the effective date of termination, unless one or more extensions in writing are granted by the State Contract Manager upon request of the Consortium made in writing within such 90 day period or authorized extension.

However, if the State Contract Manager determines that the facts justify such action, he/she may receive and act upon any such termination claim at any time after such 90 day period or any extension. Upon failure of the Consortium to submit its Termination Claim within the time allowed, the State Contract Manager may, subject to any review required by the Commission's procedures in effect at the date of execution of this termination, determine, on the basis of information available to him/her, the amount, if any, due to the Consortium by reason of the termination and shall thereupon cause to be paid to the Consortium the amount so determined.

2.6. Agreement of Termination Claim Amounts

Subject to the provisions of the Termination Claim section above, and subject to any review required by the Commission's procedures in effect as of the date of execution of the agreement, the State Contract Manager may agree upon the amounts to be paid to the Consortium by reason of the total or partial termination of work.

2.7. Failure to Agree on Termination Claim Amounts

In the event of the failure of the Consortium and the State Contract Manager to agree in whole or in part as provided in the Agreement of Termination Claim Amounts section 1.0 above as to the amounts, with respect to costs to be paid to the Consortium in connection with the termination of work, the State Contract Manager shall determine on the basis of information available to him/her the amount, if any, due to the Consortium by reason of termination and shall pay to the Consortium the amount so determined.

2.8. Right to Appeal Determination Made by the State Contract Manager

The Consortium shall have the right to appeal under the Disputes section 1.0 described above any such determination made by the State Contract Manager, except that if the Consortium has failed to request extension of such time, it shall have no such right of appeal. If the Consortium has made such determination of the amount due, the Commission shall pay to the Consortium the following:

- If there is no right of appeal or if no timely appeal has been taken, the amount so determined by the State Contract Manager, or
- If an appeal has been taken, the amount finally determined on such appeal.

2.9. Deductions in the Termination Claim Amount Due

In arriving at the amount due the Consortium under this clause, there shall be deducted:

- Any claim which the Commission may have against the Consortium in connection with the agreement, and
- The agreed price for, or the proceeds of sale of, any materials, supplies or other things acquired by or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Commission.

2.10. Partial Payments on a Termination Claim

The Commission may, from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Consortium in connection with the terminated portion of the agreement whenever, in the

opinion of the State Contract Manager, the aggregate of such payments shall be within the amount to which the Consortium will be entitled. If the total of such payments is in excess of the amount finally determined to be due, such excess shall be payable by the Consortium to the Commission upon demand, together with interest computed at the rate the Commission would have earned had the excess payment not occurred, for the period from the date excess payment is received by the Consortium to the date on which such excess is repaid to the Commission.